



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 12, 1991

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P. O. Box 469002
Garland, Texas 75046-9002

OR91-566

Dear Mr. Dempsey:

On October 15, 1991, we received your request for an open records decision pursuant to section 7 of the Open Records Act, V.T.C.S. art. 6252-17a. Your request was assigned ID# 13924. You assert that the requested internal affairs file of a Garland police officer is made confidential by section 143.089 of the Local Government Code and thus is excepted from public disclosure under section 3(a)(1) of the Open Records Act, citing Open Records Decision No. 562 (1990) as authority.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 7(a) to submit that request to the attorney general within 10 days of the governmental body's receipt of the request for information. The time limitation found in section 7 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.-Austin 1990, no writ). When a request for an open records decision is not made within the time prescribed by section 7(a), a heightened presumption of openness arises which can only be overcome by a compelling demonstration that the information should not be made public. *Id.*

However, this presumption is inapplicable to information that is confidential under section 3(a)(1). Section 10 of the Open Records Act specifically prohibits the distribution of confidential information to the public. *But see* Open Records

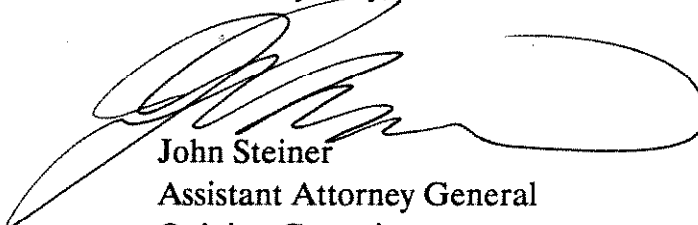
Decision No. 424 (1984) (information may be transferred from one governmental body to another without impairing confidentiality if a statute requires that the records remain confidential in the recipient's custody); V.T.C.S. art. 6252-17a, § 7(b) (information supplied to the attorney general for open records decision shall not be disclosed to the public or the requesting party until a final determination has been made by the attorney general).

We realize that the short time frame prescribed by section 7(a) may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. On October 18, 1991, we asked you for a copy of the requested internal affairs file. You have refused to provide us with a copy of this information, but further assert that the information is also protected by section 3(a)(3) of the Open Records Act.

As your request for an open records decision remains incomplete, this office lacks the necessary information to evaluate your claim under section 3(a)(1) or 3(a)(3). Accordingly, we are closing the file without a finding. The person requesting the information in your custody may pursue such remedies as may be appropriate. *See, e.g., V.T.C.S., art. 6252-17a, § 8.*

While we cannot direct you to disclose information that is confidential under the law,¹ neither can we provide you with an opinion upon which you can rely as an affirmative defense to prosecution under section 10(c)(1) of the Open Records Act. If you have any questions regarding this matter, please refer to OR91-566.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

¹We note that Open Records Decision No. 562 did not specifically address whether police officers' internal affairs files are made confidential by section 143.089 of the Local Government Code.

JS/RWP/lcd

Ref.: ID# 13924
ID# 14070

cc: Douglas Larson
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